



## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department (Board) of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC 35-20-37
<b>Regulation title</b>	REGULATIONS GOVERNING THE MONITORING, APPROVAL, AND CERTIFICATION OF JUVENILE JUSTICE PROGRAMS (6 VAC 35-20-37)
<b>Action title</b>	Addition of provisions for issuing an order of summary suspension of the license or certification to operate a group home or residential facility for children.
<b>Document preparation date</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

This action is necessary due to legislation enacted during the 2006 General Assembly session. Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) amends § 66-24 of the Code of Virginia relating to summary suspension of licenses or certificates for group homes and residential facilities under certain circumstances. It authorizes the Director of the Department of Juvenile Justice to issue orders of summary suspension of a license or certificate to operate a group home or other residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of residents. A second enactment clause in Chapter 168 requires the Board of Juvenile Justice to promulgate regulations to implement the provisions of the legislation within 280 days of enactment.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Virginia Code § 66-10 establishes the general authority of the Board of Juvenile Justice to promulgate regulations. This action is necessary due to legislation enacted during the 2006 General Assembly session. Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) amends § 66-24 of the Code of Virginia relating to summary suspension of licenses or certificates for group homes and residential facilities under certain circumstances.

In 2005 the General Assembly gave the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services Board authority to issue a summary suspension order for children's group homes and residential facilities in cases of immediate and substantial threat to the health, safety, and welfare of residents. See 12 VAC 35-45.

In 2006 the Joint Subcommittee Studying Private Youth and Single Family Group Homes pursuant to HJR 685 (2005) recommended providing the same summary suspension order authority to the Superintendent of Public Instruction, the Director of the Department of Juvenile Justice, and the Commissioner of Social Services. Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) is intended to provide consistency in the legal authority for the interdepartmental licensure program for children's residential facilities by giving all four departments the authority to address egregious circumstances while ensuring due process for the licensees or certificate holders. The legislation authorizes the Superintendent of Public Instruction, the Director of the Department of Juvenile Justice, and the Commissioner of Social Services to issue orders of summary suspension of a license or certificate to operate a group home or other residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of residents.

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The existing regulation prescribes how, in accordance with Code of Virginia §§16.1-234, 16.1-309.1, 16.1-309.9 B, 16.1-309.10, 16.1-349, and 66-10, the Board and Department of Juvenile Justice will monitor and approve residential and nonresidential programs that are part of the Commonwealth's juvenile justice system. The emergency regulation adds procedures to the existing certification process that will enable the Director to issue an order of summary suspension consistent with the statutory authority. The regulation is intended to provide the process for suspending the license or certificate to operate a group home or residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of the residents. The regulations will provide the basis for the Department to act in accordance with legal protocols and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license or certificate.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
37	37	The current regulation allows the director to take immediate administrative action whenever evidence is found of any life, health, or safety violation or a program is not in substantial compliance with board-approved standards, policies, or local plan for Virginia Juvenile Community Crime Control Act programs. Such	New language has been inserted into existing regulations that allows the director to issue a summary order of suspension of the license or certificate of any group home or residential facility when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents.  The new language establishes that the summary order of suspension will take effect upon its issuance. The new language provides the process for serving

		<p>administrative action may include withholding funds; removing juveniles from the program; or placing the program on administrative probation for up to six months pending certification action by the board.</p>	<p>notice and the timeframes for requesting and conducting an appeal.</p>
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**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

There are no appropriate alternatives to this regulatory action. The department is required to adopt emergency regulations to implement the provisions of Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) relating to summary suspension of licenses or certificates for group homes and residential facilities under certain circumstances.

**Family impact**

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

This regulatory action will establish procedures for issuing an order of summary suspension of a license or certificate to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety, and welfare of the residents. The regulations provide a vehicle for protecting the children who are admitted to licensed or certified facilities and promoting the accountability of service providers.